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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6726

DATE COMPLAINT FILED: March 5, 2013

DATE OF NOTIFICATION: March 12, 2013

DATE OF LAST RESPONSE: May 1, 2013

DATE ACTIVATED: June 13, 2013

EXPIRATION OF STATUTE OF LIMITATIONS:

October 7, 2017

ELECTION CYCLE: 2012

COMPLAINANT:

Craig Holman,
Public Citizen

Erich Pica,
Friends of the Earth – U.S.

Charlie Cray,
Greenpeace USA

Stephen Kretzmann
Oil Change International

RESPONDENTS:

Chevron Corporation

Chevron U.S.A., Inc.

Congressional Leadership Fund and Caleb Crosby
in his official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 441c(a)

11 C.F.R. § 115.2

INTERNAL REPORTS CHECKED:

Disclosure Reports; Commission Indices

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that Chevron Corporation ("Chevron") or its subsidiary
Chevron U.S.A., Inc. ("Chevron U.S.A.") made a contribution as a federal contractor in violation

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1 of the Federal Election Campaign Act, as amended (the "Act").¹ Relying upon a government
2 website, www.usaspending.gov, which tracks contracts awarded by the federal government,
3 Complainants allege that Chevron was a federal contractor in October 2012 when it made a
4 contribution to the Congressional Leadership Fund ("CLF"), an independent expenditure-only
5 political committee. Chevron acknowledges that, on October 7, 2012, it made a \$2.5 million
6 contribution to CLF but denies that it is a government contractor subject to the provisions of the
7 Act cited by the Complainant. In contrast, Chevron U.S.A. acknowledges that it is a government
8 contractor but denies that it made any federal political contribution in violation of the Act.
9 Finally, CLF states that Chevron represented that it was not a federal contractor when it made the
10 contribution and denies that CLF knowingly solicited a prohibited contribution from a federal
11 contractor.

12 As discussed below, the available information indicates that Chevron was the entity that
13 made the contribution to CLF, Chevron was not a federal contractor at the time it made the
14 contribution, and Chevron and Chevron U.S.A. appear to be separate and distinct legal entities.
15 It therefore does not appear that Chevron was subject to the Act's ban on contributions by federal
16 contractors at the time of the contribution or that Chevron's contribution should be attributed to
17 Chevron U.S.A. Accordingly, we recommend that the Commission find no reason to believe that
18 Chevron or Chevron U.S.A. violated 2 U.S.C. § 441c(a). In addition, because there is no
19 information indicating that CLF knowingly solicited a contribution from a federal contractor, we
20 recommend that the Commission find no reason to believe that CLF violated 2 U.S.C. § 441c(a).

¹ On March 5, 2012, the Complainants filed the original Complaint alleging that Chevron U.S.A., Inc. made the contribution at issue in this matter. Based on Chevron's subsequent comments to the press that it, not Chevron U.S.A., made the contribution, the Complainants filed an Addendum to the Complaint, requesting that the Commission also conduct an investigation of Chevron. Addendum to Compl. at 1 (Mar. 22, 2012).

II. FACTUAL BACKGROUND

A. Corporate Structure of Chevron and Its Subsidiaries

1. Chevron Corporation

Chevron is a Delaware corporation with headquarters in San Ramon, California. *See* Chevron Resp. at 2; Chevron Corp. 2012 Annual Report, <http://www.chevron.com/annualreport/2012/documents/pdf/Chevron2012AnnualReport.pdf>

("Chevron Annual Report"). Chevron describes itself and its numerous subsidiaries as "one of the world's leading integrated energy companies." Chevron Resp., Declaration of Kari H. Endries ¶ 9 ("Endries Decl."); Chevron Ann. Rept. at 6. Chevron reports that its combined sales and other revenue exceeded \$230 billion in 2012 and its combined income from its subsidiaries exceeded \$26.2 billion. Endries Decl. ¶ 9.

Chevron holds 100% of the stock of Chevron Investments, Inc., which in turn owns the stock of other companies, including 100% of the stock of Texaco, Inc. Endries Decl. ¶ 2. Texaco, Inc. owns the stock of other companies, including 100% of Chevron U.S.A. Holdings, Inc., which in turn owns 100% of the shares of Chevron U.S.A. *Id.*

Although Chevron's Annual Report portrays Chevron and its subsidiaries as an integrated organization, the Response distinguishes Chevron from its subsidiaries, stating that its subsidiaries are separate legal entities. Chevron Resp. at 2. The Response indicates that Chevron, "[a]s a general matter . . . does not sell any goods or services." *Id.* Rather, Chevron:

owns shares in, allocates capital to, reviews financial and performance goals for, monitors the performance of, and provides general policy guidelines to numerous global subsidiaries and affiliates, which are the separate holding or operating companies, under the direction and control of their own management, engaged in all aspects of worldwide energy operations.

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Id. Consequently, Chevron's primary assets consist of stock of other companies, and Chevron derives most of its income from the dividends of those companies. *Id.*

Contrary to the Complaint's assertions, Chevron claims that it was neither a federal contractor nor seeking to become one in October 2012 and that it has no division, unit, or person responsible for federal contracting. *Id.*; Endries Decl. ¶ 5. Although publicly available information available on www.usaspending.gov identifies "Chevron Corporation" as a federal contractor during the relevant time period, Chevron argues that this information is in error. Chevron Resp. at 6-7. Chevron states that many of the entries in the database involve companies other than Chevron or one of its subsidiaries and do not list the true vendor. *Id.* at 7 (citing Endries Decl. ¶¶ 16, 18-22). Moreover, many of the entries are dated outside the relevant time period. *Id.* at 7-8.

2. Chevron U.S.A., Inc.

Chevron U.S.A. is a Pennsylvania corporation with headquarters also located in San Ramon, California.² According to its Response, Chevron U.S.A. is engaged in all branches of the petroleum industry as well as mineral, geothermal, and other activities but derives a relatively insignificant amount from contracts with the federal government. Chevron Resp. at 2; Endries Decl. ¶ 7. Chevron U.S.A. not only explores for and produces crude oil and natural gas but also refines crude oil into petroleum products and markets such products. Endries Decl. ¶ 7. Chevron U.S.A.'s sales and other operating revenues exceeded \$183 billion in 2012, which was

² According to Dun & Bradstreet, both Chevron and Chevron USA are located at the same street address, 6001 Bollinger Canyon Road, San Ramon, California. See D&B Business Information Report for Chevron Corporation (accessed July 25, 2013), Attach. A; D&B Business Information Report for Chevron U.S.A. Inc. (accessed July 25, 2013), Attach. B (hereinafter "D&B Report for Chevron U.S.A."). Chevron's 2012 Annual Report indicates that Chevron is located at this address. Further, according to publicly available information, Chevron's Chief Executive Officer ("CEO"), John S. Watson, is also the CEO of Chevron U.S.A. Compare D&B Report for Chevron U.S.A., with Pennsylvania Department of State, Business Search, <http://www.corporations.state.pa.us/corp/soskb/Corp.asp?141525> (last visited Aug. 6, 2013), Attach. C.

1 approximately 79% of the revenue generated by Chevron and its subsidiaries, *see* Chevron Ann.
2 Report at 40, and publicly available information indicates that Chevron U.S.A.'s net worth is
3 approximately \$36.8 billion. *See* D&B Report for Chevron U.S.A. Chevron U.S.A.
4 acknowledges that it is a federal contractor, but derives "a relatively insignificant amount of
5 revenue" from federal contracts. Resp. at 2.³

6 **B. Contribution to the Congressional Leadership Fund**

7 CLF is an independent expenditure-only political committee registered with the FEC.
8 CLF Resp. at 1; CLF Statement of Organization (filed Oct. 24, 2011). According to its
9 Response, CLF does not accept contributions from federal contractors and does not solicit such
10 contributions. CLF Resp. at 1, citing Affidavit of Trent T. Edwards ¶ 4 ("Edwards Aff."). CLF
11 claims that its fundraising materials, including its website, have stated its policy against
12 accepting contributions from federal contractors. CLF Resp. at 1, citing Edwards Aff. ¶¶ 2, 4.

13 According to CLF, in late September 2012, Trent T. Edwards, Director of Development
14 for CLF, met with representatives of Chevron to explore the possibility of Chevron's making a
15 contribution to CLF. Edwards Aff. ¶ 5. Soon after that meeting, a representative of Chevron
16 indicated that Chevron was considering a contribution to CLF and that Chevron was not a federal
17 contractor. *Id.* According to a sworn statement provided by the Chevron Response, Chevron's
18 Policy, Government and Public Affairs Corporate Department requested the \$2.5 million
19 contribution to CLF, and the payment was "charged to Chevron." *See* Chevron Resp.,

³ Based upon a search we conducted on www.usaspending.gov, the federal government appears to have awarded Chevron U.S.A. over \$1.9 billion in federal contracts since 2001. *See* <http://www.usaspending.gov> (last visited Aug. 19, 2013), Search Results for "Chevron U.S.A., Inc." This amount, however, includes contracts that fall outside the relevant time period. Based upon a search for contracts awarded to Chevron U.S.A. during fiscal year 2012, Chevron U.S.A. appears to have been a federal contractor during the relevant time period, with approximately \$307 million in obligated funds. *See* <http://www.usaspending.gov> (last visited Aug. 19, 2013), Search Results for "Chevron U.S.A., Inc. FY 2012," Attach. D; *see also* Federal Government Contracts Received by Chevron U.S.A., Inc., Compl., App. A.

Declaration of Thomas G. Hoffman ¶ 3 ("Hoffman Decl."). On October 7, 2012, CLF received a check from Chevron in the amount of \$2.5 million. *See id.*; Check No. 0024282612, Chevron Resp., Ex. A.; CLF Amended 2012 12 Day Pre-Election Report (filed Oct. 26, 2012).

III. LEGAL ANALYSIS

A. The Act's Prohibition of Contributions Made By Federal Contractors

The Act prohibits any person who is negotiating or performing a contract with the United States government or any of its agencies or departments from making a contribution to any political party, political committee, federal candidate, or "any person for any political purpose or use." 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.2(a). In addition, the Act prohibits any person from knowingly soliciting a contribution from any person who is negotiating or performing a contract with the United States government. 2 U.S.C. § 441c(a)(2); 11 C.F.R. § 115.2(c).⁴ "When determining whether an entity has made a contribution in violation of 2 U.S.C. § 441c, the Commission first looks to whether the entity met the statutory and regulatory definition of government contractor at the time the contribution was made." Factual and Legal Analysis at 5, MUR 6403 (Aleut Corp., *et al.*).

The available information indicates that Chevron made the contribution to CLF and that Chevron was not a federal contractor when it made that contribution. The Chevron Response includes sworn testimony and documentation that Chevron, not Chevron U.S.A., made the

⁴ In Advisory Opinion 2010-11 (Commonsense Ten), the Commission determined that corporations may make contributions to independent expenditure-only political committees without violating 2 U.S.C. § 441b as a consequence of the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010) and the D.C. Circuit's decision in *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*), which found that "independent expenditures do not corrupt or give the appearance of corruption as a matter of law." The Commission, however, has determined federal contractors remain prohibited from making contributions to any political committee, including independent expenditure-only political committees. *See* Factual and Legal Analysis, MUR 6403 (Ahtna, Inc.).

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1 contribution to CLF in October 2012. *See* Thomas Decl. ¶ 3. We are aware of no information
2 that would contradict this evidence.

3 Chevron also asserts that "Chevron Corporation is not, and was not in October 2012, in
4 the business of federal contracting." Chevron Resp. at 12. It supports this assertion with
5 testimony from staff responsible for Chevron's corporate governance and the results of an
6 internal review initiated in response to the Complaint. *See* Endries Decl. ¶¶ 1-5, 10-31. Chevron
7 declares that, upon reviewing www.usaspending.gov and the Complaint, it identified 140 results
8 for "Chevron Corporation." *Id.* ¶ 11. Fifty-one of those entries pertained to agreements by
9 companies other than Chevron. *Id.* ¶¶ 13-14 (explaining that the website returned entries for a
10 corporation that makes insignia shaped as "chevrons"). The remaining 89 entries, which include
11 purchase or delivery orders and contract modifications, reflect a total of only 16 underlying
12 contracts. *Id.* ¶ 15. Chevron was able to locate nine of these contracts. *Id.* Of these nine
13 contracts, five were "issued in the names of Chevron affiliates and not Chevron Corporation."
14 *Id.* Four of the nine located contracts "had erroneously been issued in the name of Chevron,"
15 and performance was complete on all before October 2012. *Id.* at ¶¶ 15, 17-24.

16 Chevron was unable to locate the remaining 7 of the 16 contracts. *Id.* ¶¶ 15-16. Chevron
17 provides testimony, however, that "the database contains sufficient information about the
18 contracting company, the product, or service to be delivered . . . that it can be reasonably
19 ascertained that, if these contracts listed Chevron Corporation as the contracting party, it would
20 have been in error." *Id.* ¶ 16. These contracts included, for example, providing fuel to the U.S.
21 Coast Guard in El Salvador, a service Chevron Corporation does not provide. *Id.* ¶ 26.

22 Finally, we conducted a search for contracts awarded to "Chevron Corporation" on
23 www.usapending.gov. Consistent with Chevron's sworn testimony, most of the contracts

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1 appeared to have been completed prior to October 2012 and awarded to a Chevron subsidiary.
2 See <http://www.usaspending.gov> (last visited Sept. 26, 2013), Search Results for "Chevron
3 Corporation," Attach. E. Although we found one contract that could arguably be attributed to
4 Chevron during the relevant time period (Contract No. SP0600095C5541), Chevron states that
5 the true vendor for this contract was its subsidiary, Chevron U.S.A. Product Company. See
6 Endries Decl. ¶ 21.

7 Accordingly, Chevron does not appear to have been a federal contractor during the
8 relevant time period.

9 **B. Chevron Appears to Have Been Separate and Distinct from Chevron U.S.A.**
10 **With Sufficient Revenue to Make the Contribution from Non-Federal**
11 **Contractor Funds**
12

13 Even if Chevron did not enter into its own contracts with the federal government, because
14 Chevron U.S.A. appears to have been a federal contractor during the relevant time period,
15 Chevron could make a contribution to CLF only if Chevron was separate and distinct from
16 Chevron U.S.A and had sufficient revenue not derived from Chevron U.S.A. to make the
17 contribution. The Commission has recognized that if a parent company has an ownership
18 interest in a subsidiary that is a federal contractor, the parent company may make a contribution
19 without violating section 441c if it is a "separate and distinct legal entity" from its federal
20 contractor subsidiary and has sufficient revenue not derived from its contractor subsidiary to
21 make a contribution. See, e.g. MUR 6403 (Aleut Corp. *et al.*); Advisory Op. 2005-01
22 (Mississippi Band of Choctaw Indians); Advisory Op. 1998-11 (Patriot Holdings LLC)
23 (superseded on other grounds). If, however, the subsidiary is merely an agent, instrumentality,
24 or alter ego of the holding company, then the parent company is prohibited from making a
25 contribution. Advisory Op. 1998-11 at 5.

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1 In determining whether a parent company is "separate and distinct" from its subsidiary,
2 the Commission has not articulated a specific test but has instead made determinations based on
3 the facts and circumstances presented in each matter.⁵ Here, the record supports the conclusion
4 that Chevron and Chevron U.S.A. are separate and distinct entities. Chevron and Chevron
5 U.S.A. are separately incorporated: Chevron is a registered corporation in Delaware, and
6 Chevron U.S.A. is registered as a Pennsylvania corporation. The companies are under the
7 direction and control of separate management. *See* Chevron Resp. at 2. Although publicly
8 available information indicates that Chevron and Chevron U.S.A. may share the same CEO, the
9 public record also indicates most of the companies' directors and officers do not overlap. *See*
10 Advisory Op. 1998-11 at 5, n. 3 (determining that overlapping officers and directors between a
11 parent company and its subsidiaries was insufficient to establish that the subsidiaries were alter
12 egos of the parent company).

13 Finally, Chevron appears to have had sufficient funds *not* derived from revenue of
14 subsidiaries with federal contracts to make the \$2.5 million contribution to CLF. Chevron's
15 combined sales and operating revenues in 2012 exceeded \$230 billion, and it has provided sworn
16 testimony that significantly more than \$2.5 million was derived from dividend revenues from
17 domestic subsidiaries that were not federal contractors. *See* Endries Decl. ¶ 9.⁶

⁵ *See* Advisory Op. 1998-11 (holding company was separate and distinct from its contractor subsidiaries where holding company did not pay salary or expenses of its subsidiaries and would not be held liable if its subsidiaries breached contracts with federal government); Advisory Op. 2005-01 (Indian tribe and its subsidiary corporation were separate and distinct from each other where subsidiary was separately incorporated, owned separate property, maintained separate management, and did not intermingle contractor funds with other tribal funds); Advisory Op. 1999-32 (Tohono O'odham Nation) (Indian tribe and its subordinate entity were separate and distinct from each other where the subordinate had its own bank account, employees, personnel policies, employee benefits and legal counsel).

⁶ Indeed, that Chevron U.S.A. is well capitalized and maintains its own assets exceeding \$36 billion may alone suffice to establish that Chevron U.S.A. constitutes a separate legal entity from Chevron. *See Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001) (per curiam) (inadequate capitalization of subsidiary alone may be sufficient to hold parent corporation liable for acts of subsidiary under California law); *Cf. Commodity Futures*

1 Accordingly, we conclude that Chevron and Chevron U.S.A. have sufficiently
2 demonstrated that they are separate and distinct legal entities and that Chevron made its
3 contribution to CLF with revenue from sources other than subsidiaries holding federal contracts.

4 **C. Conclusion**

5 Because Chevron was not a federal contractor and has sufficiently demonstrated that it is
6 a separate and distinct entity from Chevron U.S.A, we recommend that the Commission find no
7 reason to believe that Chevron or Chevron U.S.A. violated 2 U.S.C. § 441c(a) by making a
8 contribution as a federal contractor.⁷ Further, given our determination as to Chevron and CLF's
9 sworn testimony that Chevron represented to CLF that Chevron was not a federal contractor, we
10 also recommend that the Commission find no reason to believe that CLF violated 2 U.S.C.
11 § 441c(a) by knowingly soliciting a contribution made by a federal contractor.
12

Trading Comm'n v. Tropworth Int'l, Ltd., 205 F.3d 1107, 1112-13 (9th Cir. 2000) (finding alter ego liability based upon undercapitalization of subsidiary).


⁷ Chevron argues also that Section 441c's prohibition on contributions is unconstitutional with respect to contributions to independent expenditure-only political committees under *Citizens United*, 130 S. Ct. at 876. Chevron Resp. at 13-18. Because we do not recommend proceeding, we do not address Chevron's constitutional challenge.


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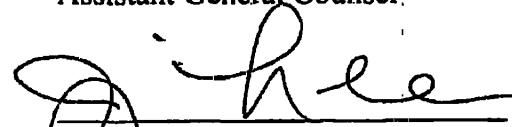
IV. RECOMMENDATIONS

1. Find no reason to believe that Chevron Corporation or Chevron U.S.A., Inc. violated 2 U.S.C. § 441c(a);
2. Find no reason to believe that the Congressional Leadership Fund and Caleb Crosby in his official capacity as treasurer violated 2 U.S.C. § 441c(a);
3. Approve the attached Factual and Legal Analyses;
4. Approve the appropriate letters; and
5. Close the file.

Date: 11/14/13


Daniel A. Petalas
Associate General Counsel


Mark Shonkwiler
Assistant General Counsel


Jin Lee
Attorney

Attachment

C. Pennsylvania Dept. of State, Business Search

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Corporations

Online Services | Corporations | Forms | Contact Corporations | Business Services

Search

- By Business Name
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- Order Business List
- My Images
- Search for Images

Business Entity Filing

History

Date: 8/6/2013

(Select the link above to view the Business Entity's Filing History)

Business Name History

Name	Name Type
Chevron U.S.A. Inc.	Current Name
Gulf Oil Corporation	Prior Name
Gulf Oil Corporation of Pennsylvania	Prior Name

Business Corporation - Domestic - Information

Entity Number:	149371
Status:	Active
Entity Creation Date:	8/9/1922
State of Business:	PA
Registered Office Address:	% PRENTICE-HALL CORPORATION SYSTEM, INC.
	PA 0 -0 Dauphin
Mailing Address:	No Address

Officers

Name:	W J PRICE
Title:	President
Address:	PO BOX 6028 SAN RAMON CA 94583-0728

Name:	K ENDRIES
Title:	Secretary
Address:	PO BOX 6028 SAN RAMON CA 94583-0728

Name:	A D CORNWELL
Title:	Treasurer
Address:	PO BOX 6028 SAN RAMON CA 94583-0728

Attachment C

1 of 2

Name: W E CRAIN
Title: Vice President
Address: PO BOX 6028
SAN RAMON CA 94583-0728



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